

FIRST AMENDED COMPLAINT FOR DAMAGES

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1. Plaintiff TRICOR is a corporation duly organized and existing under and by virtue of the laws of the State of California, and is qualified to do business in the State of California and the County of Orange, and is in good standing with the Secretary of State of the

**GENERAL ALLEGATIONS**

Plaintiff TRICOR AMERICA, INC. (hereinafter referred to as "TRICOR"), for causes of action against defendants and each of them alleges as follows:

Defendants.	Plaintiffs,
DHL CANADA EXPRESS, LTD. a Canadian corporation; LOOMIS CANADA HOLDING COMPANY, INC., a Canadian corporation; and DOES 1 through 25, inclusive.	TRICOR AMERICA, INC., a California corporation,
1. Breach of Contract	
2. Account Stated	
3. Quantum Meruit	
4. Negligent Misrepresentation	

**FIRST AMENDED COMPLAINT FOR DAMAGES FOR:**

Case No.: C07 4949 CRB

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

Laura Each Nguyen, SBN 203141  
Law Offices of Laura D. Each, PC  
5776 Lindero Canyon Rd, D-233  
Westlake Village, CA 91362  
Telephone: (818) 665-4083  
Fax: (818) 206-3230  
Attorney for Plaintiff  
TRICOR AMERICA, INC.

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State of California. TRICOR maintains its principal place of business in the City of South San Francisco, in the County of San Mateo, California.

2. Plaintiff is informed and believes, and thereupon alleges, that defendant DHL EXPRESS (CANADA), LTD. (hereinafter referred to as "DHL EXPRESS") is corporation organized and existing under and by virtue of the laws of the nation of Canada.

3. Plaintiff is informed and believes, and thereupon alleges, that defendant LOOMIS CANADA HOLDING COMPANY, INC. (hereinafter referred to as "LOOMIS") is a corporation organized and existing under and by virtue of the laws of the nation of Canada.

4. The true names and capacities, whether individual, corporate, associate or otherwise of the defendants named herein as DOES 1 through 25, inclusive, and each and all of them are unknown to TRICOR at this time, and TRICOR therefore sues said defendants and each and all of them, by such fictitious names, and TRICOR will advise this Court and seek leave to amend this Complaint when the names and capacities of each such defendant have been ascertained. TRICOR is informed and believes, and thereupon alleges that each said defendant herein designated as a DOE defendant is responsible in some manner for the events and happenings herein referred to, or as hereinafter alleged.

5. TRICOR is informed and believes and thereupon alleges, that at all times herein mentioned, each and every defendant, including DOES 1 through 25, inclusive, and each of them, was, were, and yet are the agents or employees of the other named defendants and each of them, that in so doing the things herein alleged said defendants, and each and all of them, were acting in within the course and scope of the authority conferred by, and with the consent of, each other defendant, and all of them jointly.

## FIRST AMENDED COMPLAINT FOR DAMAGES

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Against Defendants DHL EXPRESS AND LOOMIS And Does 1 Through 25

6. By this reference, TRICOR herein incorporates each and every allegation of paragraphs 1 through 8, inclusive of the General Allegations of this Complaint as if the same were set forth in full herein.

7. On or about March 2, 1984, TRICOR, on the one hand, and Defendants entered into an agreement wherein TRICOR agreed to provide any courier services requested of it by the Defendants and the Defendants agreed to pay of the courier services pursuant to agreed upon credit terms of net 30 and subject to the rates in effect at the time of service ("Agreement"). The agreement was terminable at will and subject to rate changes at any time.

8. On or about November 2006, TRICOR gave Defendants notice that as of November 15, 2006, the rate for services was increasing and the notice detailed the new rates that were in place at that time. A true and correct copy of the November 23, 2006 letter is attached as Exhibit "A" and is incorporated by reference.

9. Pursuant to the Agreement and the new rates, Defendants requested further work by TRICOR. As such, TRICOR issued written work orders for each request for services received from the Defendants. Each of these written work orders was known as a Schedule A. Each Schedule A set forth the work Tricor was to perform on behalf of Defendants. TRICOR issued numerous Schedule A's to Defendants over their twenty year business relationship. Defendants failed to pay for the work performed on three Schedule A's, which are attached hereto and incorporated by reference as Exhibit "B."

10. TRICOR performed all conditions covenants, and promises required of it under the Agreements and performed all courier services delineated in the Schedule A forms attached as Exhibit "B."

11. Yet on or about December 2006, and continuing to date, the Defendants and DOES 1 through 25, and each of them, breached the Agreement by failing to pay \$ 146,193.26

FIRST CAUSE OF ACTION

## (Breach of Contract)



FIRST AMENDED COMPLAINT FOR DAMAGES

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pursuant to California Civil Code Section 1717.

rights under the Agreements. TRICOR is entitled to reasonable attorneys' fees and costs incurred attorneys' fees and costs, and will continue to incur said fees and costs to enforce its 18. By reason of the conduct of said defendants, and each of them, TRICOR has

with interest thereon at the legal rate.

now due, owing, and unpaid from said defendants to TRICOR the sum of \$ 146,193.26, together 17. As a result, due to said defendants' breach of the Agreements as aforesaid there is agreed balance has been paid.

16. Although demanded of the Defendants, neither the whole nor any part of the balance.

due to TRICOR from said defendants. Defendants and each of them agreed to pay TRICOR said Defendants and Does 1 through 25 and on such statement a balance of \$ 146,193.26 was found

California, an account was stated in writing by and between TRICOR and defendants the

15. Within four years before the commencement of this action, at San Mateo, paragraphs 1 through 13, inclusive of this Complaint as if the same were set forth in full herein.

14. By this reference, TRICOR herein incorporates each and every allegation of

### Against DHL EXPRESS, LOOMIS And Does 1 Through 25

(Account Stated)

## SECOND CAUSE OF ACTION

TRICOR has been damaged in the sum of \$ 146,193.26, and more according to proof.

13. As a result, due to the breach of the Agreement by defendants and each of them, negotiate concessions from TRICOR.

\$ 146,193.26 payment, with the sole purpose of creating economic leverage to attempt to

continued to order courier services from TRICOR with the intention of withholding the

12. TRICOR is informed and believes that the Defendants knowingly and willfully

the Agreement. The Defendants refused to pay \$146,193.26 without any explanation.

due under the Agreement for courier services ordered and provided to it by TRICOR pursuant to

FIRST AMENDED COMPLAINT FOR DAMAGES

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28 behalf.  
 27 compensate TRICOR for the services it rendered to the Defendants' clients on the Defendants'  
 26 such representations to be true, as the Defendants had no intention of making any payment to  
 25 assurances that payment would be made, the Defendants had no reasonable grounds for believing  
 24 24. At the time that the Defendants conveyed its promises, representations, and

23 TRICOR.  
 22 false, as the Defendants had no intention of making payment for the services rendered by  
 21 assurances that the Defendants would pay for the services rendered, such representations were  
 20 23. At the time that the Defendants conveyed its promises, representations and  
 19 paragraphs 1 through 21, inclusive, of this Complaint as if the same were set forth in full herein.  
 18 22. By this reference, TRICOR herein incorporates each and every allegation of

#### Against DHL EXPRESS And Does 1 Through 25

(Negligent Misrepresentation)

### FOURTH CAUSE OF ACTION

13 of them, to TRICOR the sum of \$ 146,193.26.  
 12 therefore has been made, and there is now due, owing and unpaid from said defendants, and each  
 11 21. Neither the whole nor any party of the above sum has been paid, although demand  
 10 of them at the special request and instance of said defendants, and each of them, and no other.

9 TRICOR in for an agreed sum of \$ 146,193.26 for serviced rendered to said defendants, and each  
 8 EXPRESS, LOOMIS, DOES 1 through 25, inclusive and each of them became indebted to

7 20. Within the last two years, at South San Francisco, California, defendants DHL  
 6 paragraphs 1 through 18, inclusive, of this Complaint as if the same were set forth in full herein.  
 5 19. By this reference, TRICOR herein incorporates each and every allegation of

#### Against DHL EXPRESS and LOOMIS And Does 1 Through 25

(Quantum Meruit)

### THIRD CAUSE OF ACTION

FIRST AMENDED COMPLAINT FOR DAMAGES

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 Laura Kaoh Nguyen  
 Attorney for Plaintiff  
 TRICOR AMERICA, INC.

Dated: 11/27/07

1. For damages in the sum of \$146,193.26 and more, according to proof.
2. For prejudgment interest on said sum at the maximum legal rate;
3. For reasonable attorneys' fees;
4. For costs of suit incurred by TRICOR herein; and
5. For such other and further relief as this court may deem just and proper.

**ON ALL CAUSES OF ACTION**

25. At the time that the Defendants conveyed its promises, representations and  
 assurances that payment would be made, TRICOR believed the promises, representations, and  
 assurances to be true. Had TRICOR known that the promises, representations, and assurances  
 were false and that the Defendants had no intention of fulfilling its promises, representations and  
 assurances, TRICOR would not have continued to perform services for the Defendants.  
 26. As a direct, legal and proximate result of the Defendants' fraudulent conduct and  
 false representations and its failure to pay TRICOR for the services rendered, TRICOR has been  
 damaged in an amount in excess of \$ 146,193.26.  
 WHEREFORE, plaintiff TRICOR prays for judgment against Defendants and Does 1  
 through 25, inclusive as follows:

EXHIBIT A



ALBUQUERQUE • ANCHORAGE • ATLANTA • AUSTIN • BAKERSFIELD • BOISE • CHICAGO • DALLAS • DENVER • FRESNO  
HOUSTON • LAS VEGAS • LOS ANGELES • MIAMI • MINNEAPOLIS • NEW ORLEANS • NEW YORK • OAKLAND • PHOENIX • PORTLAND • RENO  
RIVERSIDE • SACRAMENTO • SALT LAKE CITY • SAN ANTONIO • SAN DIEGO • SAN FRANCISCO • SEATTLE • STOCKTON • TUCSON • TUSTIN

Scott Tanaka,  
Account Executive

Sincerely,

Plus \$30.00 for customs paperwork processing fee.

151+ = \$2.70 per pound  
150 = \$396.50  
140 = \$370.00  
130 = \$343.50  
120 = \$309.00  
110 = \$283.50  
100 = \$257.50  
90 = \$246.00  
80 = \$228.50  
70 = \$214.50  
60 = \$197.50  
50 = \$176.50  
40 = \$154.00  
30 = \$129.00  
20 = \$99.50  
10 = \$68.00  
5 = \$58.00  
4 = \$55.00  
3 = \$50.50  
2 = \$44.00  
1 = \$40.00

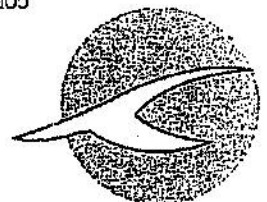
On November 15, 2006 Tricor increased rate for transportation service to offset increases  
in wage, purchased transportation and insurance expenses.

CUSTOMER #: 001521  
LOOMIS COURIER SERVICE  
101 5000 MILLER ROAD  
RICHMOND, BC V7B1K6 CANADA

November 23, 2006

CORPORATE OFFICE: PO BOX 8100 SFO INTERNATIONAL AIRPORT SAN FRANCISCO CA 94112 • 650/677-3650 • 800 400 RUSH  
FAX: 650/583 3197 • (800) 669-7914

**TRICOR**





TRICOR-CA

TARIFF TABLE MAINTENANCE

TARIFF CLASS 001521  
 X1 DESCRIPTION Loomis (Customer# 001521) effective Nov 2006

LN#	EQUAL TO OR MORE THAN	BUT LESS THAN	WEIGHT MULTIPLIER	MIN CHARGE	EX CHARGE
1	1	2	1	40.00	0.00
2	2	3	1	44.00	0.00
3	3	4	1	50.50	0.00
4	4	5	1	55.00	0.00
5	5	6	1	58.00	0.00
6	6	11	1	68.00	0.00
7	11	21	1	99.50	0.00
8	21	31	1	129.00	0.00
9	31	41	1	154.00	0.00
10	41	51	1	176.50	0.00
11	51	61	1	197.50	0.00
12	61	71	1	214.50	0.00

(F=FORWARD) , (C=CHANGE) , (D=DELETE) , (P=PAGE) , (E=END)


**EXHIBIT B**

[illegible]

TARIFF TABLE 001521

[illegible][illegible]

ACCOUNT NUMBER		001521		ACCOUNT STATUS		<input type="checkbox"/> NEW ACCOUNT <input type="checkbox"/> TOTAL ACCOUNT TERMINATION		KIM BILLINGTON		905-507-3095		12/22/2006	
BILL TO (COMPANY NAME)		LOOMIS COURIER SERVICE		STREET ADDRESS		101 5000 MILLER ROAD		CITY		RICHMOND		CONTACT	
STATE		BC		ZIP CODE		V7B1K6		POSTED BY		KTHANG1		DATE POSTED	
LOG NUMBER		32683											

 <b>TUCON</b> BASIC PERFORMANCE FACT SHEET <b>SCHEDULE "A"</b>		<input type="checkbox"/> INTERNATIONAL <input checked="" type="checkbox"/> AMERICA <input type="checkbox"/> CALIFORNIA		<input type="checkbox"/> ROUND TRIP <input checked="" type="checkbox"/> ONE WAY	
SERVICE CHANGES (SEE COMMENTS) <input type="checkbox"/> SEATTLE CHANGING (SEE COMMENTS) <input type="checkbox"/> PICK-UP FREQ/TIME <input type="checkbox"/> DROP-OFF FREQ/TIME		<input checked="" type="checkbox"/> ADDED SERVICE <input type="checkbox"/> TERMINATED SERVICE		<input type="checkbox"/> RATE CHANGING <input type="checkbox"/> LOG A <input type="checkbox"/> LOG B	
ADDRESS CHANGING (SEE COMMENTS) <input type="checkbox"/> PICK-UP FREQ/TIME <input type="checkbox"/> DROP-OFF FREQ/TIME		LOCATION A <input type="checkbox"/> LOCATION B <input type="checkbox"/>		STATION BOI	
TRIP NUMBER 32683		DATE 12/22/2006			



ACCEPTED BY (CUSTOMER)		DATE		EXPIRATION DATE		LAST DATE	
				11/01/2006			
OPERATION MANAGER		DATE		SALES REPRESENTATIVE		SALES NO.	
JAMES EMERY				SCOTT TANAKA		A0081	
<p>IMPORTANT: THIS FORM MUST BE SIGNED BY THE SALES REPRESENTATIVE AND OPERATIONS MANAGER BEFORE IT IS FORWARDED TO THE CORPORATE OFFICE.</p>							


SUPPLEMENTAL CHARGES		ALLOWABLE WEIGHT EXCESS WEIGHT CHARGES		CONTACT NO.		DAILY RATE	MONTHLY CHARGE	TOTAL MONTHLY
VAULT SALES	\$			CHARGES	DATE			
VAULT INSTALLATION	\$			ONE				
POUCHES	\$			WAY				
	\$			ROUND				
	\$			WEIGHT MULTIPLIER SHIPMENT CHARGES				

TARIFF TABLE 001521

[illegible]

PICK-UP	ADDRESS NO.	SVC STATION	SEA	770	SVC TYPE																																				
COMPANY NAME			PACCAR PARTS			STREET ADDRESS																																			
LOCATION A						502 HOMSER WAY NORTH																																			
DROPOFF			ADDRESS NO.			SVC STATION			SCH TIME MAN # RT #																																
									SU			CITY			STATE			ZIP CODE			SU			SCN TIME MAN # RT #																	
									M			23:59			TU			23:59			W			23:59			TH			23:59			F			23:59			SA		
									CONTACT			SUPERVISOR			PHONE NUMBER			TH			E			SA			ALARM CODE														
									KEY			BUILDING			VAULT			OFFICE			P.O.D.			ALARM			ALARM CODE														

ACCOUNT NUMBER	001521	STREET ADDRESS	101 5000 MILLER ROAD	CITY	RICHMOND	STATE	BC	ZIP CODE	V7B1K6	POSTED BY	KTHANG1	LOG NUMBER	32684
ACCOUNT STATUS		STREET ADDRESS	101 5000 MILLER ROAD	CITY	RICHMOND	STATE	BC	ZIP CODE	V7B1K6	POSTED BY	KTHANG1	LOG NUMBER	32684
NEW ACCOUNT	<input type="checkbox"/>	STREET ADDRESS	101 5000 MILLER ROAD	CITY	RICHMOND	STATE	BC	ZIP CODE	V7B1K6	POSTED BY	KTHANG1	LOG NUMBER	32684
TOTAL ACCOUNT	<input type="checkbox"/>	STREET ADDRESS	101 5000 MILLER ROAD	CITY	RICHMOND	STATE	BC	ZIP CODE	V7B1K6	POSTED BY	KTHANG1	LOG NUMBER	32684
TERMINATION	<input type="checkbox"/>	STREET ADDRESS	101 5000 MILLER ROAD	CITY	RICHMOND	STATE	BC	ZIP CODE	V7B1K6	POSTED BY	KTHANG1	LOG NUMBER	32684
CONTACT		STREET ADDRESS	101 5000 MILLER ROAD	CITY	RICHMOND	STATE	BC	ZIP CODE	V7B1K6	POSTED BY	KTHANG1	LOG NUMBER	32684
PHONE NUMBER	905-507-3095	STREET ADDRESS	101 5000 MILLER ROAD	CITY	RICHMOND	STATE	BC	ZIP CODE	V7B1K6	POSTED BY	KTHANG1	LOG NUMBER	32684
DATE POSTED	12/22/2006	STREET ADDRESS	101 5000 MILLER ROAD	CITY	RICHMOND	STATE	BC	ZIP CODE	V7B1K6	POSTED BY	KTHANG1	LOG NUMBER	32684

 <b>TELCEL</b> BASIC PERFORMANCE FACT SHEET <b>SCHEDULE "A"</b>		ORIGINAL*	
<b>COMPANY:</b>		<input checked="" type="checkbox"/> AMERICA <input type="checkbox"/> CALIFORNIA <input type="checkbox"/> INTERNATIONAL	
<b>MOVE STATUS:</b>		<input checked="" type="checkbox"/> ONE WAY <input type="checkbox"/> ROUND TRIP	
<input type="checkbox"/> SERVICE CHANGE (SEE COMMENTS) TOC NUMBER		<input type="checkbox"/> TERMINATED SERVICE DATE	
<input type="checkbox"/> ADDRESS CHANGE (SEE COMMENTS) STATION		<input type="checkbox"/> ADDED SERVICE BOI	
<input type="checkbox"/> LOCATION A: <input type="checkbox"/> PICK-UP FREQ/TIME <input type="checkbox"/> DROP-OFF FREQ/TIME 32684		<input type="checkbox"/> LOCATION B: <input type="checkbox"/> PICK-UP FREQ/TIME <input type="checkbox"/> DROP-OFF FREQ/TIME 12/22/2006	



JAMES EMERY OPERATION MANAGER		SCOTT TANAKA SALES REPRESENTATIVE		A0081 SALES NO.	
DATE		DATE		DATE	
ACCEPTED BY (CUSTOMER)		DATE		DATE	
PICKUP SERVICE WILL BEGIN ON		11/01/2006		LAST DATE	

SUPPLEMENTAL CHARGES		ALLOWABLE WEIGHT		EXCESS WEIGHT CHARGES		CONTRACT NO.		DAILY RATE		MONTHLY CHARGE		TOTAL MONTHLY	
VAULT SALES		OM-99999		OM-0.00		CHARGES		ONE		WAY		THIRD	
VAULT INSTALLATION		OM-1		OM-30.00		WIGHT MULTIPLIER		ONE		WAY		THIRD	
POUCHES		#		#		#		#		#		#	

## TARIFF TABLE 001521

COMMENTS / ADDITIONAL INFORMATION		SA		F 23:59		TH 23:59		W 23:59		TU 23:59		M 23:59		SU	
STREET ADDRESS		4871 MILLER RD		CITY		RICHMOND		STATE		BC		ZIP CODE		V7B1K8	
COMPANY NAME		DHL/LOOMIS		STREET ADDRESS		4871 MILLER RD		CITY		RICHMOND		STATE		BC	
ADDRESS NO.		SVC STATION		PICK-UP		PICK-UP		PICK-UP		PICK-UP		PICK-UP		PICK-UP	
DROPP-OFF		DROPP-OFF		DROPP-OFF		DROPP-OFF		DROPP-OFF		DROPP-OFF		DROPP-OFF		DROPP-OFF	

COMMENTS / ADDITIONAL INFORMATION		SA		F 23:59		TH 23:59		W 23:59		TU 23:59		M 23:59		SU	
STREET ADDRESS		650 MILWAUKEE AVE., N		CITY		ALGONA		STATE		WA		ZIP CODE		98001	
COMPANY NAME		DYNACRAFT		STREET ADDRESS		650 MILWAUKEE AVE., N		CITY		ALGONA		STATE		WA	
ADDRESS NO.		SVC STATION		PICK-UP		PICK-UP		PICK-UP		PICK-UP		PICK-UP		PICK-UP	
DROPP-OFF		DROPP-OFF		DROPP-OFF		DROPP-OFF		DROPP-OFF		DROPP-OFF		DROPP-OFF		DROPP-OFF	

LOG NUMBER		32651		POSTED BY		DCAYANO		DATE POSTED		12/21/2006	
STREET ADDRESS		101 5000 MILLER ROAD		CITY		RICHMOND		STATE		BC	
ZIP CODE		V7B1K6		PHONE NUMBER		905-507-3095		CONTACT		KIM BILLINGTON	
ACCOUNT NUMBER		001521		AGENCY STATUS		NEW ACCOUNT		TOTAL ACCOUNT		TERMINATION	

COMPANY:		AMERICA		CALIFORNIA		INTERNATIONAL	
BASIC PERFORMANCE		FACT SHEET		SCHEDULE "A"		ORIGINAL*	
LOG NUMBER		32651		STATION		BOI	
DATE		12/20/2006		DATE		12/20/2006	